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## HUTCHISON et ux. v. HARRISON.

June 16, 1921.

[107 S. E. 742.]

**1. Habeas Corpus (§ 99 (3, 6)\*)—Interest of Child Primary Consideration in Determining Custody, and Her Wishes Should Be Consulted.**—Where there is a controversy over the right to custody of a child between her parents and her maternal grandparents, who have had her with them a great part of her life, the interest of the child is the primary consideration, and, if she is of the age of discretion, she should be consulted, and due weight given her decision.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 636.]

**2. Habeas Corpus (§ 99 (1)\*)—Father Held Not Entitled as of Right to Custody of Daughter as against Grandparents.**—On petition for habeas corpus by a father to secure the custody of child of 13 or 14 years from her maternal grandparents, petitioner's wife, the mother of the child, being of a highly nervous temperament, and the child likely, as shown by her past history, to suffer in health during residence in Tennessee with her parents, while her relations with the grandparents are more affectionate than those with her parents, held, that the order of the trial court awarding custody to the father will be reversed, and the proceeding remanded, with directions to keep the same on the docket for such further orders as may prove to be necessary; the child having the right to elect at any time to go to her parents or to remain in Virginia with her grandparents.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 636.]

Error to Circuit Court, Prince William County.

Petition for habeas corpus by W. S. Harrison against Westwood and Susan Hutchison. To review order for petitioner, respondents bring error. Reversed and remanded.

*Robert A. Hutchison, C. A. Sinclair, and H. Thornton Davies*, all of Manassas, for plaintiffs in error.

*Thomas H. Lion*, of Manassas, and *T. E. H. McCroskey*, of Madisonville, Tenn., for defendant in error.

## DAVIS et al. v. KENDALL et al.

June 16, 1921.

[107 S. E. 751.]

**1. Wills (§ 616 (1)\*)—Intent Controls as to whether Power of Disposal Given to Life Tenant Enlarges Estate.**—In determining whether an added power of disposal given to life tenant enlarges the estate

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the life tenant so as to give him a fee, or merely gives him a power to pass the reversion, and not an absolute interest, the intention of the testator must be ascertained and upheld.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789.]

**2. Wills (§ 616 (1)\*)—Mere Power to Convey Reversion Does Not Enlarge Life Estate Into Fee.**—The mere fact that a power to convey the reversion is attached to a life estate will not necessarily enlarge the life estate of the first taker into a fee.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 180.]

**3. Wills (§ 616 (5)\*)—Devise to Wife Held Power of Appointment as to Reversion Not Enlarging Life Estate into Fee.**—Where a testator devised to his wife all his estate "for her sole use and benefit so long as she lives, and not to be subject to any debts, claims or demands of any future husband she may marry, and at her death to be disposed of as she may deem proper and think best," the wife was given a mere power of appointment as to the reversion, and not a power of disposal, enlarging her life estate into a fee.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 826.]

**4. Wills (§ 694\*)—Where Life Tenant's Power of Disposition of Reversion Is Not Exercised, Estate Passes by Inheritance.**—Where a testator gave his wife a life estate, with a power of appointment as to the reversion insufficient to enlarge her life estate into a fee, and the widow failed to exercise such power, the estate passed by inheritance to the heirs of the testator.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 838.]

Appeal from Circuit Court, Orange County.

Suit by Smith Davis and others against Parks G. Kendall and others, to construe the will of Robert P. Davis, deceased. From a decree dismissing complainants' bill on demurrer, complainants appeal. Reversed and remanded.

*Browning & Browning*, of Orange, for appellants.

*W. W. Butzner*, of Fredericksburg, *S. A. Anderson*, of Richmond, and *Shackelford & Robertson*, of Orange, for appellees.

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WESTON'S ADM'X *v.* HOSPITAL OF ST. VINCENT OF PAUL.

June 23, 1921.

[107 S. E. 785.]

**1. Corporations (§ 370 (2)\*)—One Is Required to Take Notice of Provisions of Charter of Corporation with Which He Deals.**—One who deals with a corporation is bound to take notice of the provi-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.